

6064 East Pointe Lane
Warrenton, Virginia 20187
March 2, 2004

Lake Whippoorwill Board of Directors
Brad Eggars
Carol Schefer
Amy Fischer

Dear Board Members,

On September 21, 2003 at 3PM we observed Lloyd Goode of Creative Wildlife Solutions spraying a substance on the entire perimeter and common area around Lake Whippoorwill across from our property. He sprayed for more than two hours. We approached him to ask him what he was doing and he told us that he had been hired by the Lake Whippoorwill HOA Board of Directors to discourage geese from populating our neighborhood. He was applying a substance called Flight Control Plus (chemical name 9, 10 anthraquinone, or anthracene, or 9, 10 anthracenedione) to the common area around the lake.

We do not know the number of times that Flight Control Plus was applied. However, our research has revealed several concerns with this practice which we would like to bring to the Board's attention.

This spraying seems to be in violation of several of our HOA covenants. First, Section 8.2.b. requires compliance with all laws. It states that "no improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction there over shall be observed."

- a. Flight Control Plus is regulated as a pesticide by the EPA and also by the Virginia Department of Agriculture. It may only be applied by a licensed professional. In Virginia, this comes under the Department of Agriculture Pesticide Control. Mr. Goode had no such licensure. This information was obtained from Robert Bailey and Tom Burke from the above Government Agency.
- b. State and EPA regulations require this product to be applied only in strict accordance with the labeling. The label states, "Do not apply this product in a way that will contact workers or other persons, either directly or through drift." Mr. Goode did not comply with this precaution. We were working in our yard, less than 100 feet from his spray and we were not warned of any danger. No fliers were distributed, and no warnings were posted. In fact, Mr. Goode told us the product was completely harmless. Perhaps he believed this, but

our research reveals otherwise. Other HOA members were strolling by the lake with young babies, children and pets and also were not warned. The yards of the Phelps, Riggs, Becketts, Mortons, Houskas, Browns and Brookes received excess drift of the mist on their yards and in the atmosphere and none were warned.

- c. Mr. Goode failed to comply with the label instruction "Allow material to dry before permitting human activity in the treated area." Mr. Goode left after he finished spraying and did not post any notices alerting to the application of the spray or the time requirement for steering clear of the affected area.
- d. Mr. Goode's failure to comply with the EPA regulations regarding this chemical put him in violation of Federal and Virginia law and made him liable for prosecution.

Second, Section 8.2.c. of the covenants state, "There shall be no emissions of dust, sweepings, dirt, cinders, odors, gasses or other substances into the atmosphere (other than normal residential chimney or outdoor grill emissions,) no production, storage or discharge of hazardous wastes on the Property or discharges of liquid, solid wastes or other harmful matter in to the ground of any body of water, if such emissions, production storage or discharge may adversely affect the use or intended use of any portions of the Property or may adversely affect the health, safety or comfort of the occupants of the Lots."

- e. Flight Control Plus, 9, 10 anthraquinone is currently under scrutiny by the EPA for carcinogenicity. Preliminary studies done by the National Toxicology Program of the Division of Environmental Sciences, National Institute of Health has determined that this chemical has clear evidence of carcinogenicity.
- f. The product label of Flight Control Plus states that it is harmful if swallowed and absorbed through the skin, and it is harmful if inhaled. It requires avoiding breathing vapor or spray mist. However, HOA members were exposed to his chemical on the day of spraying and were not warned or told to take any precautions. The next day, children innocently waiting for the bus could have been breathing the lingering vapor (we have read that the vapor can linger for as much as eleven days.) This chemical is a respiratory irritant and several of our neighborhood children have asthma. No parents were made aware of the situation. Children played in their shorts and T shirts at the lake gathering frogs and exposing their bodies to the very ground that was saturated with the chemical. To our knowledge no parents were made aware that this exposure was occurring.

- g. New York State and several other states have further tightened the EPA restrictions on the use of Flight Control Plus. They have disallowed its use on areas "that have significant exposure potential for the public (e.g. schools, athletic fields, municipal site and developed urban areas" because of the carcinogenic concerns brought to light by the NTP studies... (See enclosed anthraquinone NYS DEC Letter).

From the above information, it seems logical to conclude that application of Flight Control was not in compliance with the HOA covenants. We question whether the Board members exercised due diligence in the hiring of Mr. Goode from Creative Wildlife Solutions by obtaining copies of his certifications and verification of his compliance with regulatory laws concerning the use of pesticides. More so, we question whether the Board properly researched Flight Control Plus. This information on the chemical is easily available on the internet and we believe that a prudent Board would have carefully researched the literature before seeking out a contractor to apply it.

We would suggest that, as a minimum, the Board take the following remedial actions:

- h. Notify all HOA members of the application of Flight Control Plus. In this notification please include dates of spraying, HOA expenditures involved, and all minutes of meetings or records of conversations in which the application of this chemical was discussed or approved. Members must have accurate information concerning their potential exposure. Parents must also have information concerning activities in the common area so that they can give or withhold "informed consent" to their children to play in these areas. We suggest this notification be made within two weeks of receiving this letter.
- i. Hire a Licensed Environmental Professional to certify that the common area has been returned to a clean and safe environment. This will ensure the salability of the properties in proximity to the lake. Without it, our property could be rendered valueless.
- j. Take the issue of goose control to the general population for a vote. Do not leave this important decision to the board by proxy. If the members of the HOA do not want geese, then take appropriate, safe actions. You might consider proposing one of the following solutions:
 - a. Return the lake to its natural state—a stream feeding into a larger creek system and thus eliminating the lake as an attraction to large numbers of geese.
 - b. Allow natural grasses to grow around the perimeter of the lake. This will discourage the geese from coming.

- c. Erect a low (two or three foot) fence around the lake edge. A fence will not harm any one. It will also take care of the beaver controversy. A small fence would not deter homeowners from enjoying the area. It would also address the situation of the "attractive nuisance" of the lake. This lake lures the children to engage in dangerous play there. A fence could reduce the risk.

We have had pesticides and Mylar streamers. These not only did not work, they probably alerted any prospective buyers to the fact that there is problem with our lake—is this lake a toxic dump, a crime scene, or merely an amusement park?

Let us not loose sight of the fact that we are a community and we must protect and care for one another. Safety is our highest priority and we have entrusted the Board to ensure and to be responsible for our safety. Fostering a cohesive community based on democratic principals will protect our property values far more than dividing the community with actions that are autocratic, negligent , impulsive and potentially dangerous.

We eagerly await your response.

Respectfully,

Tom and Linda Beckett
Lot 45

April 23, 2004

Lake Whippoorwill Homeowners Association
PO Box 554
Warrenton, VA 20188

Mr. and Mrs. Beckett
6064 East Pointe Lane
Warrenton, VA 20187

Dear Mr. and Mrs. Beckett;

This letter is following up on your letter dated March 2, 2004, and your subsequent letter dated March 19th, regarding work performed by Creative Wildlife Solutions on the HOA common area by the pond. We would like to start off by saying thank you for bringing this issue to our attention. Your allegations were serious and the Board has spent a significant amount of time thoroughly researching the products used as well as the applicator.

Over the past month, the Board has contacted numerous individuals, many of whom you contacted as well, and web sites in an effort to investigate the issues you addressed. Our findings are as follows:

Flight Control Plus DOES NOT contains carcinogens (mutagens):

Regarding your allegation that Flight Control Plus contains carcinogens, our research has found that this is simply not correct. We spoke to the sources you provided including Driss Benmhend of the EPA and Tom Burke of the local Virginia Agriculture and Consumer Services Department. We also spoke with several representatives of Airepel, the manufactures of the product, including Chris Widrig, the president of the company. We also reviewed information readily available on the Internet.

Our findings show that there are three primary ways to make anthraquinone, the key ingredient in Flight Control Plus. While one method, the Coal-Tar method, can create a carcinogenic by-product, this method of production is no longer being used and has never been used by Airepel. The other two methods derive or create the product in a lab (using the Diels-Alder chemistry method) and from plants (using the Friedel-Crafts technology).

The study you referenced in your first letter used Coal-Tar derived anthracene and the by-products in the Coal-Tar, specifically 9-nitroanthrocine, may have mutagenic by-products. However, Flight Control Plus does NOT used anthraquinone made by this method. Flight Control Plus uses anthraquinone made from the plant based method and contains NO mutagenic, cancer causing contaminants.

Your letter also indicated that Driss Benmhend of the EPA said that the product was unsafe and has suspected carcinogenicity. When we spoke with Mr. Benmhend, he denied making these statements to you and stated that he was seriously mis-quoted. Mr.

Benmhend stated that "there is no scientific evidence to prove that the anthraquinone used in Flight Control Plus is carcinogenic and it is approved by the EPA for use".

Upon further investigation, the Board learned that Mr. Benmhend himself is the Regulator Action Leader for this product and has worked with Airepel, the manufacturer of Flight Control Plus, on studies and approval.

Flight Control Plus is completely safe when used as directed:

Our findings show that Flight Control Plus is a non-lethal, non-poisonous, non-toxic application designed to make the grass taste bad, which is a humane way of trying to get the geese to move elsewhere. There is nothing unsafe about the product. People can eat the grass after spraying and the sole resulting side effect would be a stomachache.

We also found that Flight Control Plus is the recommended treatment for nuisance geese by the Humane Society of the United States, as well as several other prominent agencies, and is commonly used in such places as golf courses, school campuses, and lakeside communities around the country. There are over a dozen vendors in our area alone that offer this service as a humane and ethical treatment for geese over-population and any homeowner can buy the product for personal use at LESCO without a license.

Flight Control Plus is NOT against the law in New York State and is approved in most states including Virginia:

We referenced the information you sent stating that New York had outlawed the product for use. We found, however, that this is simply not correct and Flight Control Plus is legal for use in the state around golf courses, landfills, and airports.

The information you provided on the study referenced by the state of New York was based on a preparation of anthraquinone derived from the Coal-Tar method. This method, however, is no longer used in actual production. The anthraquinone in Flight Control Plus is not derived from this method and has been proven to have no harmful by-products.

The pond area IS currently safe:

According to the product manufacturer, the area sprayed was never unsafe. Further, after speaking with the President of Flight Control Plus, Chris Widrig, we learned that the product is a water-based application which dissipates after rainfall and grass cutting. For good results, you are actually supposed to spray every 7-14 days. Given that the product is safe and legal to use in Virginia, the product does not produce harmful by-products, and given that eight months have passed since it's first and only use, we believe that your assertion that the pond area is unsafe is baseless.

The applicator was not licensed:

In speaking with Tom Burke in the local office of the Virginia Agriculture and Consumer Services Department, we were told that Lloyd Good of Creative Wildlife Solutions was not a licensed applicator of the product used. Mr. Burke stated that his office has fully investigated the matter and spoke with Mr. Good regarding the issue and the issue is closed.

When we discussed hiring Creative Wildlife Solutions last summer, Mr. Good was asked if he had the proper licenses and insurance to be conducting his work in our neighborhood. He stated he did. As a result of this current finding, the HOA has elected not to call on Creative Wildlife Solutions for service until such time as they are properly licensed.

Regarding your specific comments regarding Mr. Good's actions on the day of spraying, Mr. Good has been unavailable for comment; however, we have left numerous messages and expect to hear back from him soon.

Mr. Burke further stated, after speaking to the board and reviewing the letter you sent to us, that he must have been misunderstood in his conversation with you as neither he, nor his office, have any issues of wrongdoing with the HOA. After formally investigating the matter, Mr. Burke stated to us that the issue is closed, there is no evidence of wrongdoing on the part of the HOA, and that there were no issues as the product used is completely legal for use and is not considered a harmful substance.

The Board was NOT negligent:

Regarding your allegation that the HOA Board was negligent for having harmful and illegal substances sprayed in our community against HOA rules and by-laws, we find this assertion to be without merit. The HOA acted in good faith and Mr. Burke confirmed it was incumbent upon Mr. Good to make sure he was properly licensed.

When we interviewed Creative Wildlife Solutions, we asked if they were properly licensed and insured, and stated by letter that Creative Wildlife Solutions was not to do anything illegal, harmful, toxic, or deadly. Further, we found that the products he was using were completely legal and readily available for purchase by anyone. His methods were also endorsed by numerous agencies including the Humane Society and Geese-Peace.

Further, when you brought this issue to our attention in March, the Board acted quickly and decisively to research your concerns. In addition to referencing the information you provided us from the state of New York, we spent time validating and cross checking information with the EPA, the Virginia Department of Agriculture and Consumer Services, Airepel, the National Toxicology Program of the NIH, and other scientific research. The conclusions we have stated in this letter, that Flight Control Plus is completely safe and legal to use in the state of Virginia, were consistent across every point of contact and no party we contacted contradicted the other in any manner. This

board continues to effectively address and take care of concerns related to all homeowners.

In summary, our research shows that nothing harmful has occurred to the pond and homeowners and no problem currently exists. We are confident we have effectively addressed your concerns. Once again, we thank you for bringing this matter to the Board of Directors and we are glad we can confidently say that no harm has been done to the community. If you have any further questions, we invite you to talk with many of the experts, named below, which we have interviewed in our investigation.

Sincerely,



Brad Eggers
President
Lake Whippoorwill Homeowners Association

Carol Schefer
Vice President, Treasurer
Lake Whippoorwill Homeowners Association

Amy Fisher
Secretary
Lake Whippoorwill Homeowners Association

Cc: Mr. Tom Burke, Pesticide Investigator (540) 347-6388
Mr. Robert Bailey, Virginia Department of Agriculture in Richmond (804) 786-2373
Mr. Driss Benmhend, Regulatory Action Leader, EPA (703) 308-9525
Mr. Chris Widrig, President, Airepel (800) 468-6324

Linda Beckett
6064 East Pointe Lane
Warrenton. Virginia 20187
540 349 9906

June 13, 2004

Dr. Bernice Shane
Executive Secretary for the NTP Board
P.O. Box 12233 MD A3-01
NIEHS
Research Triangle Park, NC 27709

Dear Dr. Shane,

Thank you very much for the opportunity to express my concerns about the unrestrained use of Flight Control Plus in our neighborhood. This product contains the chemical 9.10 anthraquinone which is currently under investigation by the NTP.

Enclosed are the following documents

1. The product label from Flight Control Plus
2. A letter sent by me and my husband to our Home Owners Association Board members following our discovery that this chemical had been sprayed at least once around our neighborhood lake in ways which violated the product label. We were concerned because children play around the lake all the time. They catch frogs and play in the water and expose much of their body surface to the grass. Our lake is also a watershed eventually feeding into our drinking water aquifers. We were concerned that the HOA Board did not think it necessary to disclose to the parents that the spraying had been done. At this time, no disclosure of this fact has been made and the Board has not been willing to allow us to see records—financial and meeting minutes- which would verify their claim that the area had only been sprayed once.
3. The letter sent by the HOA President, Brad Eggers which defends his choice to spray the lake area. In it, he states his belief that Flight Control Plus poses no danger. He apparently based his opinion on the word of the manufacturer. He states that he spoke with Chris Widrig, president of Airepel. Airepel is a subsidiary of Arkion, the manufacturer of Flight Control Plus. He also bases his opinion on a conversation with the product registrant for the EPA, Mr. Driss Benmhend.
4. A Copy of the New York State Letter for Application for registration. In this letter, New York State explains its decision to restrict the use of Flight Control Plus beyond the Federal restrictions. They do not allow it to be

used in “developed urban areas” and do not allow it where children play because of its potential for carcinogenicity.

First, I hope that submitting our neighborhood experiences with Flight Control Plus will help you and the EPA to clarify the intentions of the warnings which are on the product label. The label lists the following restrictions:

1. For sale to and application by professional applicators only.
What does this mean? Lesco, our neighborhood chemical retailer apparently will sell it to anyone. Mr. Eggers discloses this fact in his letter and I called Lesco and asked if I could purchase some to spray on my lawn. I disclosed that I was homeowner plagued with geese. I was told that I could purchase Flight Control Plus by the gallon. Mr. Goode, the person hired by our HOA, also must have purchased Flight Control Plus without a license.
2. For use in “developed urban areas”. What does this mean? Mr. Eggers interprets it to mean that it can be sprayed on “golf courses, school campuses, and lakeside communities” where children play because it is so very innocuous. Is this the intention of EPA and NTP?
3. “Do not apply this chemical in a way that will contact workers or other persons, either directly or through drift”. “Harmful if inhaled. Avoid breathing vapor or spray mist”. “Harmful if absorbed through the skin”. Mr. Eggers states, “according to the manufacturer, the area was never unsafe.” As stated in our letter, when we observed this spraying, no one was notified, no one was told to keep away from the area until it dried. We and other neighbors were within one hundred feet or less while it was being sprayed. How often are these warnings ignored? I called Arkion and was told by the person with whom I spoke, that the warnings could be ignored because the product was safe and that all “chemicals have warnings on them and it doesn’t mean anything. Is this true?

Second, the registrant, Mr. Driss Benmhend seems to have apparently done an “about face” in his discussion about Flight Control Plus, first with me and second with Mr. Eggers. I am wondering if amending your study to only “Anthracene based anthraquinone” influenced his opinions and if this was your intention.

When I spoke with him at the end of February 2004, he told me that preliminary studies, done in 1999 by the NTP, had shown clear evidence of carcinogenicity, Mr Benmhend also stated that since publication of the first report, Arkion has applied to have all restrictions lifted on this chemical. Mr. Benmhend told me that in order to do this, Arkion would have to submit it own studies documenting the safety of the chemical. As of February 2004 Arkion had submitted nothing and so the restrictions on the uses of Flight Control Plus were still in effect. He expressed concerned to me about its uses in places where children play.

In March 2004, Mr. Eggers says that he spoke with Mr. Benmhend and that at this time Mr. Benmhend said that there was “no scientific evidence to prove that

the anthraquinone used in Flight Control Plus is carcinogenic." This was after the report published by NTP showing that ONLY "Anthracene derived anthraquinone" showed clear evidence of carcinogenicity in some lab animals. Did this report change Mr. Benmhends perspective about Flight Control Plus and is this your intention? Did this study cause the EPA to lift its restrictions on the use of Flight Control Plus and to make it available over the counter?

Basically, our quandary is as follows: Is Flight Control Plus safe for unrestricted use in residential neighborhoods in areas where children play? It is sold "over the counter" in Virginia and the product label is being ignored. The HOA Board in our neighborhood is an example of a group who has been swayed by the manufacturer into believing that this chemical is perfectly safe for frequent exposure to both adults and children and that no one needs to know about its use. How many other groups are using it in similar manner? Are you concerned about this? Is New York State over reacting in its more stringent restrictions on Flight Control Plus or is it justified in preventing exposure to children?

Thank you so much for your consideration.

Sincerely

A handwritten signature in cursive script that reads "Linda Beckett".

Linda Beckett